



REGULAR SESSION

County Commission

Courthouse
206 W. 1st Avenue
Hutchinson, KS 67501

A G E N D A

Reno County Courthouse Veterans Room
206 W. 1st Avenue
Hutchinson, KS 67501
Wednesday, August 30, 2023, 9:00 AM

1. **Call to Order**
2. **Pledge of Allegiance to the American Flag and Prayer**
3. **Welcome and Announcements by Commission Chair**
4. **Public Comment on Items not on the Agenda**
Please come forward to the podium, state your name and address and limit your remarks to not more than 5 minutes per item.
5. **Determine Additions or Revisions to the Agenda**
6. **Public Hearing**
 - 6.A Public Hearing regarding the issuance of Industrial Revenue Bonds (APAC-Kansas Project) in a principal amount not to exceed \$5,500,000
 1. Open the Hearing
 2. Discussion
 3. Close the Hearing
7. **Business Items**
 - 7.A Resolution determining the advisability of issuing Industrial Revenue Bonds (APAC-Kansas Project) in a principal amount not to exceed \$5,500,000 for the purpose of financing the acquisition, construction and equipping of a commercial facility; and authorizing execution of related documents
8. **Adjournment**

Randy Parks
District 1

Ron Hirst
District 2

Daniel P. Friesen
District 3

John Whitesel
District 4

Don Bogner
District 5

(Published in *The Hutchinson News*, August 22, 2023)

**NOTICE OF PUBLIC HEARING
AND OF
ISSUANCE OF INDUSTRIAL REVENUE BONDS**

Public notice is hereby given that the Board of County Commissioners of Reno County, Kansas (the "Issuer"), will conduct a public hearing on August 30, 2023 at 9:00 a.m., or as soon thereafter as may be heard at the Reno County Courthouse, 206 W. 1st Avenue, Hutchinson, KS 67501 in regard to the issuance by the Issuer of its Industrial Revenue Bonds (APAC-Kansas Project), in a principal amount not to exceed \$5,500,000 (the "Bonds") and in regard to an exemption from ad valorem taxation of property constructed or purchased with the proceeds of such Bonds. The Bonds are proposed to be issued by the Issuer under authority of K.S.A. 12-1740 *et seq.*, as amended, to pay the costs of the acquisition, construction and equipping of commercial facilities to be located at the southwest corner of the intersection of Avenue G and Airport Road in the environs of the City of Hutchinson. The Issuer further intends to lease such facility to APAC-Kansas, Inc., a Delaware corporation (the "Tenant"). The governing body of the Issuer will not adopt a resolution authorizing the issuance of such revenue bonds until the public hearing has been concluded.

Notice is further given, in accordance with K.S.A. 12-1744e, that the Issuer intends to issue the Bonds and lease the facility to the Tenant as set out above.

A copy of this Notice, together with a copy of the inducement resolution of the Issuer adopted on August 30, 2023, indicating the intent of the governing body of the Issuer to issue such Bonds and a report analyzing the costs and benefits of such property tax exemption are on file in the office of the Clerk, or will be as soon as completed, and available for public inspection during normal business hours.

All persons having an interest in this matter will be given an opportunity to be heard at the time and place above specified.

Dated: August 22, 2023

RENO COUNTY, KANSAS

Donna Patton, Clerk



AGENDA ITEM

AGENDA ITEM #7.A

AGENDA DATE: August 30, 2023

PRESENTED BY: Sarah Steele, Gilmore & Bell, P.C.

AGENDA TOPIC:

Resolution determining the advisability of issuing Industrial Revenue Bonds (APAC-Kansas Project) in a principal amount not to exceed \$5,500,000 for the purpose of financing the acquisition, construction and equipping of a commercial facility; and authorizing execution of related documents

SUMMARY & BACKGROUND OF TOPIC:

APAC Kansas, Inc formerly known as Shears has been in Hutchinson/Reno County since 1874 and has some corporate offices in leased spaces at the Trade Center on Lorraine Street. APAC has been looking at building their own office space and has requested Reno County to issue an Industrial Revenue Bond (IRB) to help with the financing of this project. The IRB will also be for the company to move and/or purchase some of their sand pit equipment to another spot on their property. The building for APAC will be at the corner of G Avenue and Airport Road on property they currently own and that is located outside the city limits of Hutchinson.

Attached is a draft resolution, as the bond counsel will have the official and final resolution at the meeting on Wednesday. Also attached is an overview of the IRB process written by Gilmore & Bell.

ALL OPTIONS:

1. Adopt the Resolution of an IRB for APAC Kansas, Inc. for \$5,500,000.
2. Deny the Resolution

RECOMMENDATION / REQUEST:

Adopt Resolution

RESOLUTION NO. 2023-_____

A RESOLUTION OF THE GOVERNING BODY OF RENO COUNTY, KANSAS DETERMINING THE ADVISABILITY OF ISSUING INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A COMMERCIAL FACILITY TO BE LOCATED IN THE COUNTY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS

WHEREAS, Reno County, Kansas (the "Issuer") desires to promote, stimulate and develop the general economic welfare and prosperity of Reno County, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the Issuer is authorized to issue revenue bonds for such purposes, and it is hereby found and determined to be advisable and in the interest and for the welfare of the Issuer and its inhabitants that revenue bonds of the Issuer in a principal amount not to exceed \$5,500,000 be authorized and issued, in one or more series, to provide funds to pay the costs of the acquisition, construction and equipping of a commercial facility (the "Project") to be located in the Issuer and within three miles of the corporate limits of the City of Hutchinson and to be leased by the Issuer to APAC-Kansas, Inc., a Delaware corporation, or another legal entity to be formed by the principals of APAC-Kansas, Inc. (the "Tenant").

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF RENO COUNTY, KANSAS:

Section 1. **Public Purpose.** The governing body of the Issuer hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the Issuer, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas.

Section 2. **Authorization to Acquire Project; Intent to Issue Bonds.** The Issuer is hereby authorized to proceed with the acquisition, construction and equipping of the Project and to issue its revenue bonds, in one or more series, in a principal amount not to exceed \$5,500,000 (the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

Section 3. **Conditions to Issuance of Bonds.** The issuance of the Bonds is subject to: (a) the adoption of a resolution authorizing the issuance of the Bonds; (b) the successful negotiation of a Trust Indenture, Site Lease, Project Lease, Bond Purchase Agreement or other legal documents necessary to accomplish the issuance of the Bonds, the terms of which shall be in compliance with the Act and mutually satisfactory to the Issuer and the Tenant; (c) the successful negotiation and sale of the Bonds to a purchaser or purchasers yet to be determined (the "Purchaser"), which sale shall be the responsibility of the Tenant and not the Issuer; (d) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the Issuer, the Tenant and the Purchaser; (e) the obtaining of all necessary governmental approvals to the issuance of the Bonds; (f) the commitment to and payment by the Tenant or Purchaser of all

expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the Issuer and the Issuer Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals; and (g) the satisfactory negotiation of an agreement with the Tenant relating to the payment or exemption of all or a portion of property taxes assessed against the Project after issuance of the Bonds.

Section 4. **Property Tax Exemption and Payment in Lieu of Taxes.** The Issuer hereby determines that pursuant to the provisions of K.S.A. 79-201a *Twenty-Fourth*, the Project, to the extent purchased or constructed with the proceeds of the Bonds, should be exempt from payment of ad valorem property taxes for ten years commencing with the year following the year in which the Bonds are issued, provided proper application is made therefor; provided no exemption may be granted from the ad valorem property tax levied: (a) by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto; and (b) for the uses restricted pursuant to the provisions of K.S.A. 79-201a, *Second* and *Twenty-Fourth*; and (c) for real estate on which the Project is located. In making such determination the governing body of the Issuer has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. 12-1749d. The Tenant is responsible for preparing such application and providing the same to the Issuer for its review and submission to the State Board of Tax Appeals. The Issuer reserves the right to negotiate a payment in lieu of taxes so exempted, to be made by the Tenant.

Section 5. **Sales Tax Exemption.** The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefor. In the event that the Bonds are not issued for any reason, the Tenant will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

Section 6. **Reliance by Tenant; Limited Liability of Issuer.** It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the Bonds. Proceeds of Bonds may be used to reimburse the Tenant for such expenditures made not more than 60 days prior to the date this Resolution is adopted. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the Issuer from the Project and not from any other fund or source. The Issuer shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the Issuer shall have no liability to the Tenant.

Section 7. **Execution and Delivery of Bond Purchase Agreement.** At such time as the Tenant has demonstrated compliance with the provisions of this Resolution, the Chairman and City Clerk are authorized to execute a bond purchase agreement with the Purchaser and the Tenant for the sale of the Bonds in a form satisfactory to the City Attorney and Bond Counsel.

Section 8. **Further Action.** The Clerk is hereby authorized to deliver an executed copy of this Resolution to the Tenant. The Chairman, Clerk and other officials and employees of the Issuer, including the Issuer's counsel and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to cooperating with the Tenant in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property; and (b) execution on behalf of the Issuer of the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act.

Section 9. **Effective Date.** This resolution shall become effective upon adoption by the Governing Body.

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DRAFT

ADOPTED by the governing body of Reno County, Kansas on August 30, 2023.

[SEAL]

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

Attest:

Clerk

DRAFT

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the Issuer adopted by the governing body on August 30, 2023, as the same appears of record in my office.

DATED: August 30, 2023.

Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
RENO COUNTY, KANSAS
HELD ON AUGUST 30, 2023**

The governing body met in regular session at the usual meeting place in County on August 30, 2023, at 9:00 a.m., the following members being present and participating, to wit:

Absent:

The Chairman declared that a quorum was present and called the meeting to order.

(Other Proceedings)

Among other business, in accordance with a notice published on August 22, 2023, in *The Hutchinson News*, a public hearing was held by the governing body relating to the proposed issuance of Industrial Revenue Bonds (APAC-Kansas Project) in a principal amount not to exceed \$5,500,000 (the "Bonds") and regarding an exemption from ad valorem taxation of property constructed or purchased with the proceeds of such Bonds. All interested persons were afforded an opportunity to present their views on the issuance of the Bonds, the location and nature of the Project to be financed with the proceeds of the Bonds and the exemption from ad valorem taxation. Thereupon, the public hearing was closed.

Thereupon, there was presented a Resolution entitled:

**A RESOLUTION OF THE GOVERNING BODY OF RENO COUNTY, KANSAS
DETERMINING THE ADVISABILITY OF ISSUING INDUSTRIAL REVENUE
BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION,
CONSTRUCTION AND EQUIPPING OF A COMMERCIAL FACILITY TO BE
LOCATED IN THE COUNTY; AND AUTHORIZING EXECUTION OF RELATED
DOCUMENTS**

Thereupon, Commissioner _____ moved that the Resolution be adopted. The motion was seconded by Commissioner _____. The Resolution was duly read and considered, and upon being put, the motion for the adoption of the Resolution was carried by the vote of the governing body, the vote being as follows:

Aye: _____.

Nay: _____.

Thereupon, the Chairman declared the Resolution duly adopted and the Resolution was then duly numbered Resolution No. _____ and was signed by the Board of County Commissioners and attested by the Clerk.

(Other Proceedings)

On motion duly made, seconded and carried, the meeting hereupon adjourned.

CERTIFICATE

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of Reno County, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

Clerk

DRAFT

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KANSAS CITY
ST. LOUIS
OMAHA
SALT LAKE CITY

KANSAS INDUSTRIAL REVENUE BONDS AND TAX ABATEMENT OVERVIEW

Issuance of Revenue Bonds

K.S.A. 12-1740 permits cities and counties (each referred to herein as the “Issuer”) to issue revenue bonds for the purpose of paying the costs of purchasing, acquiring, constructing or equipping facilities for “agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing purposes” and to enter into leases or lease-purchase agreements for such facilities with the party applying for the property tax abatement (referred to herein as the “Applicant”).

K.S.A. 12-1740-1749d, inclusive, as amended (the “IRB Act”) requires that the Issuer prepare a cost benefit report, conduct a public hearing, adopt an ordinance authorizing the issuance of the revenue bonds and follow certain other procedural requirements prior to issuing revenue bonds. Bond Counsel can provide a detailed description of the steps that must be followed to obtain property tax abatement.

Required Steps for Issuing Revenue Bonds

Lease of Property to Issuer. The IRB Act requires that the Issuer have a legal interest in the property that is subject to tax abatement. To satisfy this requirement, the Applicant leases the property to the Issuer pursuant to a site lease. The Applicant retains title to the property throughout the IRB process.

Lease of Property to the Applicant. The Issuer will enter into a project lease with the Applicant leasing the Issuer’s interest back to the Applicant. The term of the project lease will generally be the same as the term of the property tax abatement, but the term may extend for a longer period in some circumstances. The Applicant will have the option to purchase clear title to the property at the end of the lease term. The project lease requires that the Applicant make lease payments during the term of the project lease equal to the principal and interest payments due on the bonds.

Purchase of the Revenue Bonds

The Applicant is responsible for finding a purchaser for the revenue bonds. Revenue bonds may be purchased by a bank, by an underwriter or by the Applicant.

Applicant Purchased Bonds. This is commonly referred to as a buy your own bond tax abatement financing, and is the most common arrangement on tax abatement financings. For a buy your own bond financing, the bonds are sold to the Applicant. The Applicant then makes lease payments to itself. Under this structure, the bonds are commonly issued after the Applicant’s lender has recorded its mortgage and advanced funds under its loan. When the property is leased to the Issuer under the site lease, it is leased

subject to the lender's mortgage. A diagram describing this method of tax abatement financing is attached as **Schedule 1**.

Bank and Underwriter Purchased Bonds. When revenue bonds are sold to a bank or to the public through an underwriter, the proceeds from the sale of the revenue bonds are made available to the Applicant and used to acquire and construct the property that will be subject to property tax abatement. The Applicant will agree to make lease payments under the project lease which will then be passed on to the bank or the other owners of the revenue bonds.

Benefits of Issuing Industrial Revenue Bonds

Sales Tax Exemption Certificate. The Applicant may obtain a sales tax exemption certificate which may be used by the Applicant and its contractor to purchase construction materials, machinery and equipment if such items will be purchased with proceeds of the revenue bonds. K.S.A. 79-3606(d) exempts "all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state . . . the total cost of which is paid from funds of such political subdivision . . . and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision or district. This Section further provides that funds of a political subdivision include "the proceeds of any bonds."

K.S.A. 79-3606(d) sets forth the following mechanics for using the sales tax exemption certificate: "When any political subdivision of the state . . . shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the political subdivision . . . a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision . . . shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto."

Property Tax Abatement. There are two methods of obtaining real property tax abatement in Kansas. The first method is the issuance of revenue bonds pursuant to the IRB Act. The second method is the constitutional method pursuant to Article 11, Section 13 of the Constitution of the State of Kansas and K.S.A. 79-213 and 79-251, as amended. This overview only discusses the industrial revenue bond method of obtaining property tax abatement.

Real property that is acquired with the proceeds of revenue bonds may be exempt from property taxation for a period of ten years; provided no exemption may be granted from the ad valorem property tax levied by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto (commonly known as the Capital Outlay Levy which may be up to 8 mills). K.S.A. 79-201(a) *Second* states that any property “constructed or purchased in part with the proceeds of revenue bonds . . . shall be exempt from taxation to the extent of the value of that portion of the property financed by the revenue bonds and only for a period of 10 calendar years after the calendar year in which the bonds were issued.” Property used in any retail enterprise identified under NAICS sections 44 and 45, inclusive, except facilities used exclusively to house the headquarters or back office operations of such retail enterprises, is not eligible for property tax abatement. A list of the prohibited retail enterprises is attached as **Exhibit A**. Although real property purchased with bond proceeds is exempt from property taxes for a period of ten years, the Issuer will often require that the Applicant make certain payments in lieu of property taxes to the Issuer. For example, it is not un-common for an Issuer to require 50% payments in lieu of tax, which results in 10 years of 50% real property tax abatement. Kansas law treats all payments in lieu of tax the same as property tax payments.

Tax Status of Interest on Revenue Bonds

Federal Taxation. The interest paid on revenue bonds is generally subject to federal income taxation. If revenue bonds are used to finance certain projects, such as a project that will be used for manufacturing or processing, the interest paid on the revenue bonds may be exempt from federal income taxation. Bond Counsel should be consulted to determine whether interest paid on the revenue bonds may be exempt from federal income taxation.

State Taxation. The interest on all revenue bonds is exempt from state of Kansas income taxation. If the revenue bonds are purchased by the Applicant or a related party, the party purchasing the revenue bonds may not be able to receive the benefit of the tax-exempt interest. Tax counsel or an accountant should be consulted to determine the tax implications of purchasing revenue bonds.

Depreciation of Bond Financed Property

The Applicant should consult with its accountants and attorneys to determine how to depreciate bond financed property. It has been our experience that the Applicant will generally be treated as the owner of bond financed property for federal tax purposes. This accounting treatment is not uniform, and the Applicant and its accountants and attorneys should make their own determination.

Questions

Please contact Sarah O. Steele or Dominic Eck at Gilmore & Bell, P.C. at 316-267-2091 or ssteele@gilmorebell.com or deck@gilmorebell.com.

Schedule 1

Diagram for Applicant Purchased Bonds

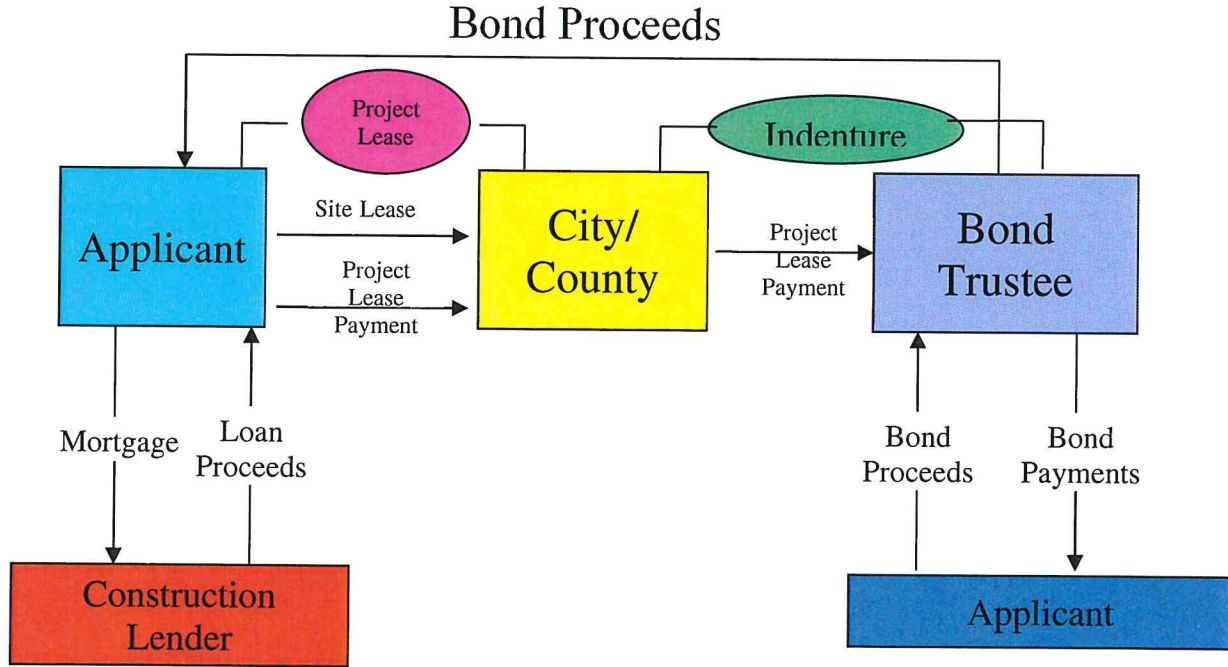


Exhibit A

Uses of Property not Eligible for Property Tax Abatement (NAICS sections 44 and 45)

Retail Trade (NAICS 44-45)

Motor Vehicle and Parts Dealers (NAICS 441)

Furniture and Home Furnishings Stores (NAICS 442)

Electronics and Appliance Stores (NAICS 443)

Building Material and Garden Equipment and Supplies Dealers (NAICS 444)

Food and Beverage Stores (NAICS 445)

Health and Personal Care Stores (NAICS 446)

Gasoline Stations (NAICS 447)

Clothing and Clothing Accessories Stores (NAICS 448)

Sporting Goods, Hobby, Book, and Music Stores (NAICS 451)

General Merchandise Stores (NAICS 452)

Miscellaneous Store Retailers (NAICS 453)

Nonstore Retailers (NAICS 454)